

Illegitimate legislature?

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On March 18, President Leonid Kuchma approved the amendments to the controversial Election Law, allowing to "pull" candidates in the parties' election lists in case one or more candidates occupying higher positions in the lists also run and win in majoritarian constituencies. Although the President's signature under the amendments helps to avoid a potential danger of having up to one third of the seats empty due to "duplications", it does not completely eliminate the shade of illegitimacy hanging over the would-be legislature. Rather, it reflects the bad habit of adjusting rules of the game during the game to fit the needs of the players.

After the Constitutional Court ruled that a number of principle provisions of the Election Law ran counter the constitution but, nevertheless, allowed the election process to continue according to the flawed law, it created a precedent which, according to many analysts, threatened to put in jeopardy the whole system of parliamentarism in Ukraine. The Constitutional Court's prohibition for candidates to run simultaneously in majoritarian constituencies and on the party lists was perceived as a demonstration of justice, until it became clear that the prohibition would come into force only before the 2002 parliamentary election campaign. The ethnical aspect of the situation when some candidates received twice as many chances to be elected as the others was ignored. The judgment made the Central Election Commission face an uneasy choice in case a candidate gets elected both in the majoritarian constituency and on the party list. It left for the Commission to decide whether a particular winner was to be registered as an MP from "his" majoritarian constituency, or whether "his" seat obtained through the party list should remain empty or filled by the next in the line. It also created a potential problem of "padding" the list with "sponsors" and other violations.

Many MPs appeared to be well aware of hazards of the "semi- constitutional" law. According to ex-prime minister Yevhen Marchuk, MP, if the Constitutional Court does not legalize the amendment that allowed parties and blocs to "pull" candidates on their lists to fill new vacancies, the new parliament may be short of a number of MPs, which, in its turn, might bring policy- makers back to talks about extending the current parliament's term. Similarly, deputy chairman of the parliamentary Committee for Legal Policy and the Judiciary Reform Oleksandr Lavrynovych argued that the failure of the President to sign the amendments and the rejection of the idea of "pulling" candidates on the lists by the Constitutional Court would make the elections impossible. Deputy Speaker Victor Musiyaka regarded the "absurdist situation" as a major challenge to the would-be parliament and saw the only way out in legalization of the "pulling". Otherwise the parliament would not be elected in full, said he, hence, envisaging conditions under which the legislature might be dissolved by the president. All in all, about 80 candidates who run in majoritarian constituencies, also occupy positions in the "top 5" of political parties' and blocs' election lists, and the total number of candidates that will be trying luck both ways is about 150.

Searching for a way to cope with the situation created by the drawbacks in the inconsistent Election Law, the Verkhovna Rada changed the wording of the article stipulating a candidate's right to "withdraw from the race at any time before the polling day". By deleting the phrase "before the polling day" from the text, the parliament gave parties and blocs the possibility to move candidates up their lists. If a candidate wins in a majoritarian constituency, he or she now has a possibility to give up the seat he or she would otherwise claim as a member of the party or bloc that has passed the 4% threshold. To vacate his or her place on the list, the candidate now may submit an application to the Central Election Commission - even after the polling day - asking to withdraw his or her name from the list. Hence, the parliament "improved" its previous arrangement for "pulling" candidates on the lists automatically and, probably, spared the Constitutional Court of numerous complains from unsuccessful candidates. In order to secure itself from possible problems, the Central Election Commission followed the suggestion of deputy Speaker Musiyaka and appealed to the Constitutional Court seeking further explanation of how the powers of such new MPs should be confirmed.

Commenting on the President's decision not to make the MPs' lives even harder on the eve of the parliamentary election by rejecting the amendment, chairman of the Central Election Commission Mykhailo Ryabets said he hoped the Constitutional Court would not object to the new norm that

allowed moving candidates in the party lists after the election if some of the candidates on those lists won seats independently. According to Ryabets, such decision of the Constitutional Court would be "reasonable", while the failure to confirm the "pulling" procedure would create "many collisions". Although the President did approve the amendments, it is still unclear whether the Constitutional Court will allow the dubious practice of "pulling" the lists. Meanwhile, announcing the President's approval of the amended law, his chief of staff Yevhen Kushnariov promised that the top judiciary body's judgment would be "in about the same context".

If the Constitutional Court judges that the amendment is unconstitutional, as many other provisions of the Election Law, it is possible that representation of political parties and blocs in the parliament will be substantially weakened, while left-wing parties and blocs which have the lowest proportion of "duplications" will enhance their representation in the supreme legislative body. If the amendment is approved, it may discredit the mere idea of the proportional-majoritarian system and cast the shade of doubt on legitimacy of the would-be parliament. In the context of the experience of lasting tension between the Ukrainian parliament and the executive branch, the controversy over legitimacy of the provisions that served as the basis for the election of the new parliament might be used by the president as a heavy lever of influence on the law-makers. The discrepancies between the constitutional norms and the Election Law - even though allowed by the Constitutional Court and approved by the President - and violations before and during the election might be used as formal grounds for dissolution of the parliament.

Used to looking for far-reaching plans behind every political development, some analysts argue that the questions about the legitimacy of the new parliament will remain and that the suspicions about the status of the legislature may be particularly useful for the President who will have to work with the new parliament - likely to be strongly anti-Kuchma - for almost eighteen months. Some of the Ukrainian policy-making community criticize the Constitutional Court for taking the decision that might endanger -or compromise - the Ukrainian parliamentarism, especially for postponing implementation of its key judgments for four years while giving no good reason for doing so. The situation also confirmed the lack of professionalism of the current parliament. Today, with only one week left before the polling day, there is too little time to prevent a possibility of any potential excuse for solving the tensions between the legislature and the executive by means of dissolving the former.